



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 3, 2005

Ms. Mary Winston  
Public Information Officer  
Texas Savings and Loan Department  
2601 North Lamar, Suite 201  
Austin, Texas 78705

OR2005-00019

Dear Ms. Winston:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 216038.

The Texas Savings and Loan Department (the "department") received a request for copies of all complaints filed against a named individual, all reports of any investigations conducted on a named individual, and all reports of any adverse actions taken against a named individual by the department. The department states that it has already released to the requestor copies of any adverse actions taken against the named individual and that no investigation report has been prepared. You claim that the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 156.301 of the Finance Code provides in relevant part:

(b) On the signed written complaint of a person, the commissioner shall investigate the actions and records of a person licensed under this chapter if the complaint, or the complaint and documentary or other evidence presented in connection with the complaint, provides reasonable cause. The commissioner, before commencing an investigation, shall notify a mortgage

broker or loan officer in writing of the complaint and that the commissioner intends to investigate the matter.

...

(f) Information obtained by the commissioner during an inspection or an investigation is confidential unless disclosure of the information is permitted or required by other law.

You state the requested complaints are information obtained by the commissioner during an inspection and investigation under section 156.301 of the Finance Code, and are therefore confidential under section 156.301(f). Upon receiving a signed written complaint from a person, the commissioner must determine whether the complaint provides reasonable cause for an inspection or investigation and, if so, must notify the mortgage broker or loan officer of the commissioner's intent to investigate the matter. Gov't Code § 156.301(b). An inspection or investigation under section 156.301 does not begin until after a person makes a complaint; thus, we believe the submitted complaints were not information obtained by the commissioner during an inspection or investigation, and therefore, are not confidential under section 156.301(f). As such, the submitted information must be released to the requestor.

You also state that although no investigation report has been prepared and is therefore not available, such reports should remain confidential. The department asks this office to issue a previous determination authorizing the department to withhold investigation reports and other information acquired during an investigation under section 156.301 of the Finance Code if requested in the future. We decline to issue such a previous determination at this time. Therefore, this letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us. This ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Amanda Crawford  
Assistant Attorney General  
Open Records Division

AEC/jev

Ref: ID# 216038

Enc. Submitted documents

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(w/o enclosures)